DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS: 07-0313
Indiana Corporate Income Tax
For the Tax Year 2003

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. **Adjusted Gross Income Tax**—Sales Factor: Inclusion of Indiana Property Sales.

Authority: IC § 6-3-2-1; IC § 6-3-2-2; IC § 6-3-4-14; IC § 6-8.1-5-1; 45 IAC 3.1-1-38; 45 IAC 3.1-1-62; *Hunt Corp. v. Indiana Dep't of State Revenue*, 709 N.E.2d 766 (Ind. Tax Ct. 1999).

Taxpayer protests the Department's decision to include Taxpayer's sales from its Indiana property in the sales factor of its Indiana consolidated adjusted gross income tax return.

STATEMENT OF FACTS

Taxpayer is a real estate management company domiciled in Nevada. Taxpayer is a partner in a unitary partnership that is also domiciled outside of Indiana. The partnership controls several LLCs and partnerships that own and manage real estate located across the United States. Taxpayer filed a consolidated Indiana adjusted gross income tax return for the tax year 2003. Pursuant to an investigation report for the tax year 2003, the Indiana Department of Revenue (Department) assessed additional adjusted gross income tax and interest. The Taxpayer protested the assessment. An administrative hearing was held, and this Letter of Findings results.

I. **Adjusted Gross Income Tax**—Sales Factor: Inclusion of Indiana Property Sales.

DISCUSSION

Pursuant to IC § 6-8.1-5-1(c), all tax assessments are presumed to be accurate, and the taxpayer bears the burden of proving that an assessment is incorrect.

Indiana imposes an adjusted gross income tax on "that part of the adjusted gross income derived from sources within Indiana of every corporation." IC § 6-3-2-1(b). Pursuant to IC § 6-3-4-14(a)-(b), "[A]n affiliated group of corporations shall have the privilege of making a consolidated return with respect to the taxes imposed by IC 6-3 . . . with the exception that the

affiliated group shall not include any corporation which does not have adjusted gross income derived from sources within the state of Indiana."

IC § 6-3-2-2, in relevant part, provides:

> (a) With regard to corporations and nonresident persons, "adjusted gross income derived from sources within Indiana," for purposes of this article, shall mean and include:
> (1) income from real or tangible personal property located in this state;
> (2) income from doing business in this state;
> (3) income from a trade or profession conducted in this state;
> (4) compensation from a trade or profession conducted in this state; and
> (5) income from stocks, bonds, bank deposits, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other intangible personal property if the receipt from the intangible is attributable to Indiana under section 2.2 of this chapter.
> In the case of nonbusiness income described in subsection (g), only so much of such income as is allocated to this state under the provisions of subsections (h) through (k) shall be deemed to be derived from sources within Indiana. In the case of business income, only so much of such income as is apportioned to this state under the provision of subsection (b) shall be deemed to be derived from sources within the state of Indiana. . . .
> (b) Except as provided in subsection (l), if business income of a corporation or a nonresident person is derived from sources within the state of Indiana and from sources without the state of Indiana, the business income derived from sources within this state shall be determined by multiplying the business income derived from sources both within and without the state of Indiana by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three (3). . . .

Taxpayer requested, in a non-binding ruling request, and failed to receive the requisite statutory permission to exclude its Indiana property sales from the sales apportionment factor. Nonetheless, Taxpayer proceeded to file its Indiana consolidated adjusted gross income tax return with the Indiana property sales excluded from the sales apportionment factor. The Department found that Taxpayer should include the sale of Indiana property in the apportionment factor as required under the standard apportionment method. Taxpayer protested the Department's determination asserting again that the sale of the Indiana property was an extraordinary transaction and its inclusion in the sales factor distorted the amount of Taxpayer's income that is apportioned to Indiana.

Taxpayer refers to IC § 6-3-2-2(l), which provides:

> If the allocation and apportionment provisions of this article do not fairly represent the taxpayer's income derived from sources within the state of Indiana, the *taxpayer may petition* for or the department may require, in respect to all or any part of the taxpayer's business activity, if *reasonable*:
> (1) separate accounting;

> (2) the exclusion of any one (1) or more of the factors;
> (3) the inclusion of one (1) or more additional factors which will fairly represent the taxpayer's income derived from sources within the state of Indiana; or
> (4) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income. (*Emphasis added*).

In addition, Taxpayer refers to the regulation on special formulas for division of income, 45 IAC 3.1-1-62, which provides:

> Special Formulas for Division of Income. All corporations doing business in more than one state shall use the allocation and apportionment provisions described in Regulations 6-3-2-2(b)-(k) [45 IAC 3.1-1-37–45 IAC 3.1-1-61] unless such provisions do not result in a division of income which fairly represents the taxpayer's income from Indiana sources. In such case *the taxpayer must request in writing* or the Department may require the use of a more equitable formula for determining Indiana income. However, the Department will depart from use of the standard formula only if the use of such formula works a hardship or injustice
> upon the taxpayer, results in an arbitrary division of income, or in other respects does not fairly attribute income to this state or other states. It is anticipated that these situations will arise only in limited and unusual circumstances (which ordinarily will be unique and nonrecurring) when the standard apportionment provisions produce incongruous results. (*Emphasis Added*).

The Department refers to IC § 6-3-2-2(m), which provides:

> In the case of two (2) or more organizations, trades or businesses owned or controlled directly or indirectly by the same interests, the department shall distribute, apportion, or allocate the income derived from sources within the state of Indiana between and among those organizations, trades, or businesses in order to fairly reflect and report the income derived from sources within the state of Indiana by various taxpayers.

In summary, IC §§ 6-3-2-2(l) and (m) provide the Department discretionary authority to adjust the allocation and apportionment provisions of the Taxpayer's adjusted gross income tax in order to arrive at an equitable and accurate allocation of Taxpayer's Indiana income. The purpose of the adjustments is to "fairly reflect . . . the income derived from sources within the state of Indiana . . . ." IC § 6-3-2-2(m).

It is clear from the language in subsection (l) that the preferred method of filing returns is the standard apportionment or separate company filing method of representing a taxpayer's income derived from Indiana sources. Other methods of income allocation and apportionment (including the exclusion of one or more factors) should only be allowed when those provided for by IC § 6-3-2-2 do not fairly reflect a taxpayer's Indiana income. In short, if the Indiana sources income in the instant case can be fairly represented on the basis of standard apportionment or separate company filing method, then such filing methods should be used.

Accordingly, the question now becomes whether requiring taxpayer to use a standard apportionment or separate company filing method, instead of the exclusion of a factor, would result in a failure to fairly reflect the income taxpayer reported as Indiana sources income.

Taxpayer asserts that while it is not extraordinary for Taxpayer to sell a piece of property, it is extraordinary for Taxpayer to sell a majority of its Indiana property in one year. However, Taxpayer's business decision to sell the Indiana property in one year does not change the fact that the sale of the property is one hundred percent taxable in Indiana.
Moreover, it does not appear that when the Department includes an activity that is one hundred percent taxable in Indiana in the apportionment factor, which raises the apportionment factor, that the Department has unfairly represented Taxpayer's Indiana activity by using the standard apportionment method.

Accordingly, Taxpayer's Indiana income is fairly reflected when Taxpayer is taxed on its entire Indiana activity. Taxpayer's recommendation to exclude the sales of the Indiana property from the apportionment factor unfairly reflects Taxpayer's Indiana income because it ignores the fact that Taxpayer sales of the Indiana property resulted in a substantial amount of income in Indiana. Thus, the increase in Taxpayer's apportionment factor is the natural result of Taxpayer's increased Indiana activity. It is unreasonable to exclude an activity from the apportionment factor merely because Taxpayer had increased activity for that year, which increased the apportionment factor.

Therefore, Taxpayer has failed to provide sufficient information establishing that its Indiana source income is unfairly represented when a preferred method of filing is used. Since it is Taxpayer's burden to prove that the preferred methods of filing returns--standard apportionment or separate company filing--do not fairly represent taxpayer's Indiana source income, Taxpayer has failed to meet its burden of proof in this case.

FINIDNG

Taxpayer's protest is respectfully denied.

AB/WL/DK—November 27, 2007